

27 JUN 1973

MEMORANDUM FOR: Legislative Counsel

ATTENTION : [REDACTED]

THROUGH : Special Assistant for Information Control, DDM&S

SUBJECT : S. 1726, Freedom of Information Act Amendments of 1973

REFERENCE : OLC 73-0570, 13 June 1973

1. Reference is made to your request for suggestions which would serve as a basis for an Agency position in response to Senator Ervin's request for the Director's views and recommendations concerning S. 1726.

2. On pages 3 and 4 the proposed bill authorizes a single classification, i.e., Secret Defense Data. This category is defined as any official information on material the unauthorized disclosure of which may reasonably be expected to cause damage to the national defense. Such material may be so classified only if its unauthorized disclosure would adversely affect the ability of the United States to protect and defend itself against overt or covert hostile action. We prefer the current classification categories, established earlier by Executive Order and continued by Executive Order 11652, because there are different degrees of damage which could result from unauthorized disclosures. In the case of TOP SECRET information such damage is defined as exceptionally grave while SECRET is defined as serious and CONFIDENTIAL is the same as proposed in the bill, i.e., "may reasonably be expected to cause damage." The current breakdown permits better control of documents for protection and accountability purposes, i.e., dissemination of TOP SECRET information is more restricted and protected than that of CONFIDENTIAL information. We do not believe that the use of routing indicators as proposed in the bill is as efficient or reliable as the present system.

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3. On page 7 the bill requires that a complete list of the names and official addresses of all individuals within an agency authorized to classify be submitted quarterly to the Comptroller General of the United States and that copies of such lists be made available upon written request to any Member of Congress or any Committee thereof. This appears to be in conflict with Section 6 of P.L. 110 wherein we could protect against the disclosure of the names and titles of people employed by the Agency. This is, of course, important to our people under cover.

4. Pages 7 and 8 require that documents designated as Secret Defense Data should indicate the names and titles of the individuals who classified the documents. This also would conflict with Section 6 of P.L. 110. We would prefer our current procedure, i.e., the employee serial number.

5. Page 8 requires that paragraphs or other separate segments of a document be marked to indicate whether they are classified or unclassified. This would create an intolerable burden on those offices which create large numbers of documents containing both classified and unclassified segments. As you know, Executive Order 11652 requires that this be done only to the extent practicable.

6. Pages 8 and 9 require that information or material classified by and furnished to the United States by a foreign government or international organization must be released to any Member of Congress or Committee thereof upon written request. It prohibits the United States from classifying such a document unless its unauthorized disclosure could reasonably be expected to cause damage to the national defense or to the defense of the foreign government. We object to this proviso on two grounds: (1) foreign governments or international organizations would be reluctant to release documents containing very sensitive information if they were to be made available to any Member of Congress who desires them, and (2) the foreign government or international organization would be reluctant to permit a representative of the United States from making the determination as to whether the unauthorized disclosure would affect their national defense. They obviously prefer to make that decision.

7. Pages 10 through 12 provide that documents should be declassified automatically after two years unless the appropriate Agency head determines that the material is of such sensitivity and importance to continue its classification. For each item, the classification of which is to be

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continued, the head of the Agency must submit in writing to the Congress and the Comptroller General a detailed justification for such continued classification. This would place an intolerable administrative burden on those agencies which classify a large volume of documents which require more than two years' protection and would be difficult for the Congress and the Comptroller General to process.


8. Page 13 permits a district court to overrule the decision of the Agency head to defer automatic declassification. This would hinder the Director in his responsibility to protect intelligence sources and methods.

9. On page 15 the bill grants the Administrator of General Services declassification authority for such classified data as has been transferred to the General Services Administration in order to be placed in the Archives of the United States. This proviso again would be in conflict with the statutory responsibility of the Director to protect sources and methods.

10. On page 17 the bill authorizes the Comptroller General of the United States to audit and investigate complaints. This proviso is also in conflict with the sources and methods proviso in Section 6 of P.L. 110.

11. On page 18 the bill prohibits any person from withholding information or material from the Congress. This provision would presumably permit the Congress to subpoena any of our employees and prohibit them from withholding any information or material even over the objection of the Director.

12. Please advise if any additional data are desired. STATINTL



Howard J. Osborn
Director of Security

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

S. 1726, Freedom of Information Act Amendments of 1973

FROM:

Director of Security
Room 4 E 60

EXTENSION

6777

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Special Assistant for
Information Control,
DDM&S

28 Jan 73

28 Jan 73

CCG

2. Legislative Counsel
Attn: [REDACTED]

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This office endorses the observations made by the OGC and the OS. Compliance with the provisions of E.O. 11652 is difficult enough, but implementation of the legislation here proposed would pose an almost impossible burden (e.g., positive action would be required to retain the protection required for the hundreds of thousands of classified records produced each year, and this action would have to be repeated at two-year intervals--with the number of documents affected growing each year). Protection of sensitive sources and methods is fundamental to the successful operation of an intelligence organization. It is somewhat ironic that the very legislation which would make protection of sources difficult for government agencies recognizes the right of newsmen to withhold such information from public disclosure.

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